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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,823	12/07/2001	John R. Moody	2324 (GP-00-41)	7822

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EXAMINER

SCHLAK, DANIEL K

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 08/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/004,823

Applicant(s)

MOODY, JOHN R.

Examiner

Daniel K Schlak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,642,836 to Merriweather, Jr.

See figure 2.

Merriweather teaches a housing defined by side walls, front wall, top portion, bottom portion, a stack of interfolded towels, and a plate which abridges the length of the dispensing aperture by about 80% of the transverse length of the towels. The plate comprises upwardly inclined terminal portions projecting upwardly at each end, wherein the aperture is abridge to about 85 percent of the length of the towels, depending upon the lengths of the towels inserted into the device of Merriweather.

The angle of inclination of the terminal portions is approximately 20 degrees in relative to something at some point during its pivoting movement.

The opening has a central enlarged portion and two restricted terminal portions defined by the terminal portions. The span of the central portion is approximately twice the span of the restricted terminal portions (in a direction lateral to the opening length). The dispensing aperture has a span of about 30 percent of a transverse width of the towels, depending upon which towels are inserted. The terminal portions have a span of about 40 percent of the abridged length of the dispensing aperture.

There are provided means for defining a lower surface about the periphery of the dispensing aperture. Merriweather is a "forward lading device", as the towels are advanced "forward" during loading, as opposed to "backward", which would serve no loading capacity whatsoever.

### ***Response to Arguments***

Applicant's arguments filed 6/4/03 have been fully considered but they are not persuasive.

Applicant alleges that Merriweather does not comprise a bottom and an adapter plate. Certainly the side walls and front and back walls have bottoms. If the adapter plate were removed from Merriweather's device, it would still have a bottom defined by the bottoms of these walls. Every three dimensional body has a bottom. Just like Merriweather's device has sides, and a top, and an inside and an outside, it has a bottom which is only partially substantiated by the adapter plate.

Applicant alleges that Merriweather does not disclose the aperture having a length which is less than the length of the paper towels. Applicant alleges that Merriweather shows an aperture having a length which is greater than the length of the towels.

Applicant is directed to the preambles of each and every independent claim (1, 11, and 21), which recite "for dispensing... towels having a transverse length, L," which are the basis for the length of the towels which later is used to establish the alleged deficiency of the Merriweather reference. The Examiner directs Applicant's particular

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attention to the first two words of this recitation, specifically, the phrase “for dispensing”. No positive recitation of the towels and their length has been made in any of the claims. In each independent claim is set forth a dispenser with sides, top, bottom, adapter plate, etc., and the towels are only indirectly described in an attempt to set forth what the device is to be used for. As Merriweather comprises all of the elements of the claims, it certainly could be used “for dispensing... towels having a transverse length, L,” which is greater than the length of the aperture in the adapter plate. There is no structural evidence to suggest otherwise, and therefore Merriweather’s device is, just as much as the instant invention, “for dispensing... towels having a transverse length, L,” which is greater than the length of the aperture in the adapter plate, and in a specific example, Merriweather’s device can easily be used “for dispensing” towels wherein the aperture would be 90% of the transverse length, L. As the devices are structurally equivalent insofar as the claims of the instant invention teach nothing in any limitative sense which is not anticipated by Merriweather, the claims should not and cannot stand or fall in applicability based upon what size towels a user might or might not decide to put inside the dispenser.

Thus is the nature of intended use recitations such as “for” in setting forth the metes and bounds of the claims. There is no reason to believe that Merriweather’s device is incapable of dispensing towels having a length 111% longer than the length of the aperture shown in figure 1, and therefore Merriweather explicitly and without fail teaches a device “for dispensing... towels having a transverse length, L,” which is greater than the length of the aperture in the adapter plate and wherein the aperture

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ends up being, after insertion of towels, between 80 and 90% of the length of the inserted towels. It is further the nature of the intended use recitations which allows a claim such as those of the instant application to hold as limitative even when the device is not performing the capacity to which the claims are attributed via such language.

In other words, the claims do not cease to apply when the device is emptied of towels, or when the device has been stuffed with unforeseen matter. According to 35 U.S.C. 112, 2<sup>nd</sup> Paragraph, claims should not change in scope or meaning with the passing of time. This means that to ascribe patentable weight to the intended use recitation would establish a set of claims which is intermittently applicable and not applicable, as it is filled and emptied of towels. Further, why would applicant want to exclude his/her right to control of manufacture of the device right up to the point where towels are inserted? In fact, the Examiner believes it to be in the best interest of Applicant to obtain claim coverage that is independent of what a user might or might not stick inside the device, as certainly an infringer can side-step the limitations of the instant claims by simply foregoing the sale of the device with the towels already inside. As Applicant is operating in a field wherein stacks of towels are sold independently from the dispenser, it seems that restricting the coverage of the claims to be dependent upon the length of towels would be the last thing for which a patent application would/should be pursued.

As Applicant has made no claim for a dispenser as set forth in claims 1, 11, or 21, wherein the towels of length L are actually present, the rejections under 35 U.S.C. 102(b) have not been withdrawn.

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Applicant summarily alleges that Merriweather is a bottom loading device and therefore cannot anticipate claim 21, as claim 21 sets forth a "forward loading towel dispenser". It's not like the towels of Merriweather's device are marched in backwards or in any direction contrary to that which they naturally experience. They move in the direction they move, and as any linear advancement can be ascribed either of the adjectives "forward" or "backward", solely based upon the discretion of an observer, the Examiner asserts that the towels are moved "forward" when being loaded into Merriweather.

In short, as the claims are directed to an apparatus, and as the reference shows a very similar apparatus, the claims must be amended to include a structural limitation not shown in the reference prior to any favorable patentability decision by the Examiner.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel K Schlak whose telephone number is 703-305-0885. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on 703-306 - 4173. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308 - 1113.

dks

  
DONALD P. WALSH  
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